

Employment and Training Administration, Labor

§ 655.1

alien workers are admitted, the terms and conditions of their employment must not result in a lowering of the terms and conditions of domestic workers similarly employed, *Williams v. Usery*, 531 F. 2d 305 (5th Cir. 1976); *Florida Sugar Cane League, Inc. v. Usery*, 531 F. 2d 299 (5th Cir. 1976), and the job benefits extended to any U.S. workers shall be at least those extended to the alien workers.

(b) *Subparts D and E.* Subparts D and E of this part set forth the process by which health care facilities can file attestations with the Department of Labor for the purpose of employing or otherwise using nonimmigrant registered nurses under H-1A visas.

(c) *Subparts F and G.* Subparts F and G of this part set forth the process by which employers can file attestations with the Department of Labor for the purpose of employing alien crewmembers in longshore work under D-visas and enforcement provisions relating thereto.

(d) *Subparts H and I of this part.* Subpart H of this part sets forth the process by which employers can file labor condition applications (LCAs) with, and the requirements for obtaining approval from, the Department of Labor to temporarily employ the following three categories of nonimmigrants in the United States: (1) H-1B visas for temporary employment in specialty occupations or as fashion models of distinguished merit and ability; (2) H-1B1 visas for temporary employment in specialty occupations of nonimmigrant professionals from countries with which the United States has entered into certain agreements identified in section 214(g)(8)(A) of the INA; and (3) E-3 visas for nationals of the Commonwealth of Australia for temporary employment in specialty occupations. Subpart I of this part establishes the enforcement provisions that apply to the H-1B, H-1B1, and E-3 visa programs.

(e) *Subparts J and K of this part.* Subparts J and K of this part set forth the process by which employers can file attestations with the Department of Labor for the purpose of employing nonimmigrant alien students on F-visas in off-campus employment and

enforcement provisions relating thereto.

[43 FR 10312, Mar. 10, 1978, as amended at 52 FR 20507, June 1, 1987; 55 FR 50510, Dec. 6, 1990; 56 FR 24667, May 30, 1991; 56 FR 54738, Oct. 22, 1991; 56 FR 56875, Nov. 6, 1991; 57 FR 1337, Jan. 13, 1992; 57 FR 40989, Sept. 8, 1992; 69 FR 68226, Nov. 23, 2004; 73 FR 19947, Apr. 11, 2008]

§ 655.00 Authority of the Office of Foreign Labor Certification (OFLC) Administrator under subparts A, B, and C.

Pursuant to the regulations under this part, temporary labor certification determinations under subparts A, B, and C of this part are ordinarily made by the Office of Foreign Labor Certification (OFLC) Administrator (OFLC Administrator) of the Employment and Training Administration. The OFLC Administrator will informally advise the employer or agent of the name of the official who will make determinations with respect to the application.

[71 FR 35518, June 21, 2006]

Subpart A—Labor Certification Process and Enforcement of Attestations for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H-2B Workers)

SOURCE: 73 FR 78052, Dec. 19, 2008, unless otherwise noted.

§ 655.1 Scope and purpose of subpart A.

The Immigration and Nationality Act (INA) at 8 U.S.C. 1184(c)(1) requires the Secretary of the Department of Homeland Security (DHS) to consult with appropriate agencies before authorizing the entry of H-2B workers. DHS regulations at 8 CFR 214.2(h)(6)(iv) provide that an employer's petition to employ nonimmigrant workers on H-2B visas for temporary non-agricultural employment in the United States (U.S.), except for Guam, must be accompanied by an approved temporary labor certification from the Secretary of Labor (Secretary).

§ 655.2

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(a) *Purpose.* The temporary labor certification reflects a determination by the Secretary that:

(1) There are not sufficient U.S. workers who are qualified and who will be available to perform the temporary services or labor for which an employer desires to hire foreign workers, and that

(2) The employment of the H-2B worker(s) will not adversely affect the wages and working conditions of U.S. workers similarly employed.

(b) *Scope.* This subpart sets forth the procedures governing the labor certification process for the temporary employment of nonimmigrant foreign workers in the H-2B visa category, as defined in 8 U.S.C. 1101(a)(15)(H)(ii)(b). It also establishes obligations with respect to the terms and conditions of the temporary labor certification with which H-2B employers must comply, as well as their obligations to H-2B workers and workers in corresponding employment. Additionally, this subpart sets forth integrity measures for ensuring employers' continued compliance with the terms and conditions of the temporary labor certification.

[77 FR 10148, Feb. 21, 2012]

§ 655.2 Authority of the agencies, offices, and divisions in the Department of Labor.

(a) *Authority and role of the Office of Foreign Labor Certification (OFLC).* The Secretary has delegated her authority to make determinations under this subpart, pursuant to 8 CFR 214.2(h)(6)(iv), to the Assistant Secretary for the Employment and Training Administration (ETA), who in turn has delegated that authority to OFLC. Determinations on an *Application for Temporary Employment Certification* in the H-2B program are made by the Administrator, OFLC who, in turn, may delegate this responsibility to designated staff members, e.g., a Certifying Officer (CO).

(b) *Authority of the Wage and Hour Division (WHD).* Pursuant to its authority under the INA, 8 U.S.C. 1184(c)(14)(B), DHS has delegated to the Secretary certain investigatory and law enforcement functions with respect to terms and conditions of employment in the H-2B program. The Secretary has, in

turn, delegated that authority to WHD. The regulations governing WHD investigation and enforcement functions, including those related to the enforcement of temporary labor certifications, issued under this subpart, may be found in 29 CFR part 503.

(c) *Concurrent authority.* OFLC and WHD have concurrent authority to impose a debarment remedy under § 655.73 or under 29 CFR 503.24.

[77 FR 10148, Feb. 21, 2012]

§ 655.3 Territory of Guam.

Subpart A of this part does not apply to temporary employment in the Territory of Guam, except that an employer seeking certification for a job opportunity on Guam must obtain a prevailing wage from the Department in accordance with § 655.10 of this subpart. The U.S. Department of Labor (Department or DOL) does not certify to the United States Citizenship and Immigration Services (USCIS) of DHS the temporary employment of nonimmigrant foreign workers under H-2B visas, or enforce compliance with the provisions of the H-2B visa program, in the Territory of Guam. Under DHS regulations, administration of the H-2B temporary labor certification program is undertaken by the Governor of Guam, or the Governor's designated representative.

[77 FR 10148, Feb. 21, 2012]

§ 655.4 Special procedures.

To provide for a limited degree of flexibility in carrying out the Secretary's responsibilities, the Administrator, OFLC has the authority to establish, continue, revise, or revoke special procedures in the form of variances for processing certain H-2B applications. Employers must request and demonstrate in writing to the Administrator, OFLC that special procedures are necessary. Before making determinations under this section, the Administrator, OFLC may consult with affected employers and worker representatives. Special procedures in place on the effective date of this regulation, including special procedures